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IN THE HIGH COURT OF JUDICATRE AT MADRAS

DATED:06.03.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

H.C.P.No.56 of 2006

Mohammed Sheriff .. Petitioner

vs.

1. The Union of India rep. by
   The Secretary to Government
   Food and Consumer Protection Department
   New Delhi.

2. The State of Tamil Nadu
   rep. by the Secretary
   Food and Consumer Protection Department
   Fort St. George, Chennai 9.

3. The District Magistrate &
   District Collector
   Coimbatore District
   Coimbatore. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas corpus as stated therein.

For petitioner : Mr. V. Jeevagiridharan
For respondents: Mr. Abudukumar Rajarathinam
2 & 3 Govt. Advocate (Crl.side)
Mr. P. Kumaresan
ACGSC for R.1

ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

The petitioner by name Mohammed Sheriff, son of the detenu L. Babu, who was detained as a "Black Marketeer" under Section 3 (2) (a) read with 3 (1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, by the impugned proceedings dated 23.12.2005, challenges the order of detention in this petition.

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2. It is seen from the grounds of detention that the detenu L. Babu was engaged in smuggling of Kerosene meant for Public Distribution System (PDS). Kerosene is an essential commodity as defined in Essential Commodities Act, 1955 and it is being smuggled for disposal at higher prices in black market with a view to make a gain in contravention of the provisions of Essential Commodities Act, 1955 and Tamil Nadu Kerosene (Regulation of Trade) Order, 1973. It is further seen that the activities of Babu are prejudicial to the maintenance of supplies of commodities essential to the community. The detenu has come to adverse notice in two cases for smuggling kerosene; in one case, the seized kerosene was confiscated to Government and he paid the fine of Rs.10,000/- and in another case, two mini-door autos belonging to the detenu and carrying 11 and 12 cans of 35-litre capacity each containing kerosene respectively were seized and on deposit of Rs.10,000/- by the detenu, the mini door autos were ordered to be released. In the ground case, 910 litres of PDS kerosene was seized. Hence, there was compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of the supplies of the commodities essential to the commodity under the provisions of Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

3. Heard Mr. Jeevagiridharan, learned counsel for the petitioner, Mr. Abudukumar Rajarathinam, learned Government Advocate for respondents 2 and 3 and Mr. P. Kumaresan, learned Additional Central Government standing counsel for the first respondent.

4. At the foremost, the learned counsel for the petitioner by pointing out that in the alleged ground case, the occurrence is said to have taken place on 21.09.2005 and complaint was made on 25.10.2005, whereas the detention order was passed only on 23.12.2005, submitted that there is no compelling necessity for detaining the detenu under the Act. As regards the said contention, learned Government Advocate submitted that after the occurrence that took place on on 21.09.2005, the authorities concerned had fulfilled various formalities and passed the detention order on 23.12.2005 and hence, it cannot be claimed that there is no compelling necessity. It is seen that on 21.09.2005 at 15.00 hours on information, the Assistant Rationing Officer, Circle-1, Coimbatore North Circle conducted a raid along with his party in a house situated at D.No.4(C) Gandhiji Road, North Thayir Itteri in Sananoor Village and found 26 plastic cans each containing 35 litres of PDS blue kerosene (a total of 910 litres) stored on the western side of a newly constructed building attached with that house and also several empty barrels. The blue kerosene and all other items were seized under a cover of mahazar in the presence of witnesses.

5. On the complaint of the District Revenue Officer, Coimbatore District dated 28.09.2005, a case in Crime No.474/2005under Section 5(1) & 17(1) of TNK (respondent) Order 1973 r/w 7(1) a(ii) of Essential Commodities Act, 1955 was registered against one Ramalath. Investigation revealed that one Jabbar, husband of Ramalath, of Kerala State is the owner of the house and Babu, had taken the said house on lease and hoarded the PDS kerosene for selling it in black market. In the course of investigation, the Inspector of Police, Civil Supply CID, Coimbatore arrested the detenu at 12.00 noon on 19.12.2005, opposite to Raja Saw

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Mill, Thayir Itteri, Rathinapuri, Coimbatore. The detenu made a confession statement in the presence of independent witnesses at 12.00 noon on 19.12.2005, wherein he has admitted that he smuggled and hoarded the Kerosene meant for PDS. The detenu was produced before the Judicial Magistrate No.I, Coimbatore on 19.12.2005 and remanded to judicial custody till 02.01.2006 and was lodged in Central Prison, Coimbatore. It is also seen that he came to adverse notice in two previous cases for smuggling kerosene. In one case he was fined and he remitted the same and in another case, on depositing a sum of Rs.10,000/-, the vehicles involved were ordered to be released. In such circumstances and in the light of the materials placed, we are unable to accept the argument of the learned counsel for the petitioner.

6. The learned counsel for the petitioner then contended that in the confession statement the detenu has admitted that he purchased blue kerosene from the public on payment of Rs.20 per litre and by purchasing the same he stored it in a house. By drawing our attention learned counsel for the petitioner contended that since the detenu has not smuggled kerosene either from PDS shop or intended for PDS, his activities are not prejudicial to the maintenance of supply of essential commodities. We are unable to accept the said contention. In the confession statement recorded at 12.00 noon on 19.12.2005, though it is stated that he purchased kerosene from public who in turn purchased from the ration shops, he admitted that by collecting the same, he stored 910 litres of blue kerosene, in order to sell the same at a higher price in open market. As rightly pointed out that as per Clause 17 of the Tamil Nadu Kerosene (Regulation of Trade) Order, 1973, no person other than an importing oil company or a dealer licensed or registered under the Order shall have in his possession or under his control a stock exceeding twenty liters of kerosene at a time. In the light of the confession statement that he kept 910 liters of PDS kerosene, it cannot be claimed that his activities are not prejudicial to the maintenance of supply of essential commodities. Accordingly, we reject the said contention also.

7. The learned counsel for the petitioner next contended that as there is discrepancy in the number of cans between the recovery mahazar and the statements of witnesses to the recovery mahazar, the detention order is liable to be quashed on the ground of non-application of mind on the part of the detaining authority. As pointed out by the learned Government Advocate, we verified the recovery mahazar and the statements of witnesses, which are available in the paper book and found that though there is a minor discrepancy regarding the number of cans viz., 26 or 22, the fact remains that in all the documents, including the recovery mahazar, statements of mahazar witnesses, etc., it is mentioned that a total quantity of 910 litres of blue kerosene was seized. In such a circumstance, the minor discrepancy as pointed out would not affect the impugned detention order. Accordingly, we reject the said contention also.

8. The learned counsel for the petitioner submitted that though the recovery was made on 21.09.2005, sample was sent for examination only on 26.10.2005, i.e., nearly, after a period of one month, which creates a doubt over the proceedings. As rightly pointed out by the learned Government Advocate, even if there is any delay in sending sample, in our view, it would not vitiate the detention order.

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9. Finally, the learned counsel for the petitioner contended that though representation was made as early as on 2.01.2006, there is no intimation regarding disposal of the same by the State and central Governments. As regards the same, learned Additional Central Government standing counsel, on specific instructions, informed this Court that after considering the representation with reference to the remarks offered by the State Government, Central Government rejected the same on 06.01.2006. In so far as the State Government is concerned, the particulars furnished show that the representation dated 02.01.2006 was received by the Government on 04.01.2006, remarks were called for on 05.01.2006, remarks were received on 09.01.2006, file was submitted on 16.01.2006 (11.1.2006, 14.1.2006 and 15.01.2006 are holidays), the Under Secretary and the Deputy Secretary dealt with it on 16.01.2006 and finally, the Minister for F & C dealt with the same on 18.01.2006 and the rejection letter was sent to the detenu on 20.01.2006 and served on the detenu on 23.01.2006. If we exclude the intervening holidays, we are of the view that there was no undue delay in the disposal of the representation by the State Government.

In the light of what is stated above, we do not find any ground for interference. Consequently, this petition fails and the same is dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Union of India
   Food and Consumer Protection
   Department, New Delhi.

2. The Secretary
   State of Tamil Nadu
   Food and Consumer Protection
   Department
   Fort St. George, Chennai 9.

3. The District Magistrate &
   District Collector
   Coimbatore District
   Coimbatore.

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4. The Superintendent, Central Prison
   Coimbatore (In duplicate for Communication to detenu)

5. The Public Prosecutor
   High Court, Chennai.

6. The Joint Secretary to Govt.,
   Public (L&O) Dept.,
   Fort Saint George,
   Chennai-9.

1 cc To Mr.V.Jeevagiridharan, Advocate, SR.10733.

P.D. Order in
HCP.No.56 of 2006

JE(CO)
RVL 16.03.2006

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